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September 6, 2005

Via UPS

Mr. Andy Pollock
Executive Director
Nebraska Public Service Commission
300 The Atrium
1200 "N" Street
Lincoln, NE 68509-4927

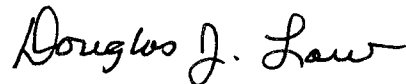
Re: Written Comments of Aquila, Inc. d/b/a Aquila Networks
Application No. NG-0030/PI98

Dear Mr. Pollock:

Enclosed for filing in the above-referenced case is the original and six (6) copies of *Written Comments of Aquila, Inc. d/b/a Aquila Networks*. Please file stamp the extra copy and return same to my office in the enclosed self-addressed stamped envelope.

If you have any questions or concerns regarding the enclosed filing, please contact me at your earliest convenience.

Sincerely,



Douglas J. Law

DJL/lw
Enclosures

OM-203473-1

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its)
own motion, seeking to conduct an)
investigation of alternative rate design)
for commercial and industrial ratepayers)

Application No. NG-0030/PI-98

WRITTEN COMMENTS OF AQUILA, INC. d/b/a AQUILA NETWORKS

In its Order of June 21, 2005, the Nebraska Public Service Commission (the “Commission”) requested written comments on issues related to alternative rate design options for certain commercial and industrial ratepayers in Nebraska served by Nebraska jurisdictional utilities. Aquila, Inc. d/b/a Aquila Networks (“Aquila”) is one of three jurisdictional utilities providing service under the Nebraska State Natural Gas Regulation Act (the “State Act”), codified at Neb. Rev. Stat. §§ 66-1801 through 66-1857. Aquila serves its ratepayers, other than high-volume ratepayers, under tariffs filed and approved by the Commission. Aquila serves high-volume ratepayers under negotiated arrangements, pursuant to Neb. Rev. Stat. §66-1810.

Background

As noted in the Commission’s Order Opening Docket in this matter, under the law existing prior to the State Natural Gas Regulation Act, the Municipal Natural Gas Regulation Act, and, in particular, Neb. Rev. Stat. §19-4604(4) (Repealed), if a customer had natural requirements exceeding fifty thousand cubic feet per day, a utility could negotiate price and other contract terms with the customer. Elsewhere in the repealed law, a “customer” was defined as “a non-interruptible purchaser of natural gas within a municipality with requirements of less than one hundred thousand cubic feet of natural gas per day” Neb. Rev. Stat. §19-4602(5) (Repealed). With the enactment of the State Natural Gas Regulation Act, the description of a ratepayer’s

consumption threshold under Commission regulation was defined in terms of what was not regulated, i.e. a “high-volume” ratepayer was defined as one “whose natural gas requirements equal or exceed five hundred therms per day as determined by average daily consumption,” Neb. Rev. Stat. § 66-1802(7). This new law describes natural gas consumption in terms of the heating value of the natural gas, as opposed to the volume of natural gas, consistent with the manner in which natural gas ratepayers have purchased such commodity in recent years. It also provides for “average daily consumption” as opposed to the more vague language of the former law. Under the prior municipal law, peak day or maximum consumption acted as a threshold above which rates could be negotiated.

As a result of the use of “average daily consumption” language in the current State Act, certain commercial ratepayers who would have qualified for negotiated rates now do not. Instead, those customers obtain service under the regulated tariff service under the State Act, i.e. those ratepayers whose peak demand exceed the statutory level but whose average daily consumption does not. For these ratepayers, natural gas service by the jurisdictional utility is under its tariff, as filed with the Commission.

As the Commission knows, legislation was passed during the 2004 Nebraska Unicameral Legislature to authorize the Commission to provide a “waiver” of the definition for “high-volume ratepayers” for certain ratepayers, in order to allow jurisdictional utilities to continue to serve customers who were previously served under negotiated contracts but no longer qualify under the State Act. The Commission possesses jurisdictional authority to waive application of the “High-Volume” definition under Neb. Rev. Stat. §66-1810 until June 1, 2007. The Commission has granted such waiver to Kinder Morgan in Docket No. NG-0022. As a result of

the Kinder Morgan case, the Commission opened this investigation in order to explore reasonable options to serve affect, formerly high-volume customers.

While Aquila has not been a party to the Kinder Morgan proceeding, Aquila wishes to provide its written comments in this matter to assist the Commission in its investigation. To the extent Aquila is required to formally intervene, it does hereby request to be a party to this proceeding.

Alternative Rate Design Options

Aquila concurs with the comments of NorthWestern Energy when it advocates that the Commission should work with each jurisdictional utility to determine the optimal rate design for that utility, rather than undertake to prescribe a specific rate design option for all jurisdictional utilities. Aquila agrees with the other jurisdictional utilities that each jurisdictional utility has different service areas, serves different sized communities, and may even have a different manner for serving its customers.

As explained in more detail below, the State Act provides for Commission review of the rates charged by jurisdictional utilities, whether upon a rate change application by the utility or upon the Commission initiating an investigation. Under either scenario, the Commission's responsibilities include establishing just and reasonable rates that permit recovery of prudently incurred costs yet avoids unjust discrimination in the treatment of ratepayers.

Aquila will address below the specific areas set forth in its June 21, 2005 Order in this proceeding.

Discussion of Commission's Issues to Explore

1. *Whether the Commission has the requisite jurisdiction to require an alternative rate design.*

The Commission's authority under the State Act over jurisdictional utilities and the rates they charge to ratepayers is very broad, but such authority is strictly limited by various provisions of the State Act. For example, Neb. Rev. Stat. § 66-1810 provides that a jurisdictional utility may provide service to high-volume customers without regard to any rates, tolls, tariffs, or charges the jurisdictional utility may have on file at the Commission. That section further provides that with the exception of filing of its contracts, "... high-volume ratepayers shall not be subject to the jurisdiction of the Commission. (*Emphasis added.*)

In addition to this provision, where the Commission does possess jurisdiction, the State Act requires that rates must be just and reasonable and not unreasonably preferential or discriminatory, Neb. Rev. Stat. § 66-1825(1); and the Commission must give "due consideration" to the public's need for "adequate, efficient and reasonable natural gas service" and the jurisdictional utility's need for sufficient revenue to furnish that service, including a "fair and reasonable return" on its investment, Neb. Rev. Stat. § 66-1825(3). As part of setting rates, the Commission must consider rate design alternatives. Existing rates are *prima facie* reasonable unless or until changed or modified by the Commission or through court proceedings, Neb. Rev. Stat. § 66-1807. Therefore, any change in jurisdictional rates must be supported by findings (following the presentation of evidence in support thereof) that justify such change. Proceedings for a change in rates can be instituted by a jurisdictional utility, Neb. Rev. Stat. § 66-1808, § 66-1838, § 66-1851, or § 66-1855; by the Commission in its investigatory role, Neb. Rev. Stat. § 66-1809; or via a complaint by a third party, Neb. Rev. Stat. § 66-1811.

Rate design alternatives for jurisdictional rates are discussed in the State Act at Neb. Rev. Stat. § 66-1851 provides for the customer choice or other programs for the unbundling of service by a jurisdictional utility. Neb. Rev. Stat. § 66-1855 provides for the Commission to authorize banded rates with a minimum and maximum rate, determination of rates by negotiation, and customer choice or other programs for unbundling. The State Act does not speak to the Commission “requiring” an alternative rate design for jurisdictional rates, but rather it authorizes the Commission to approve alternatives. Aquila supports a proposal to discuss rate design of jurisdictional rates in an open forum, during a proceeding, that any alternative rate design to be approved be done with the input of all participants, and after a full and fair hearing on the alternative and its ramifications for ratepayers and the jurisdictional utility. An alternative implemented with full concurrence and support is more likely to be successful than an alternative “required” by the Commission, over the objection of the jurisdictional utility or its customers. The Commission cannot order a rate design that is unduly preferential, discriminatory, or permits unlawful cross-subsidization.

Finally, as noted above, the systems, service areas, and the jurisdictional utilities themselves serving Nebraska are very different, and imposing an alternative rate design on all jurisdictional utilities may not “fit” all of them, and may not be in the best interests of all of their ratepayers or all of the companies.

2. *Characteristics common to small and mid-size commercial and industrial [customers] whose natural gas consumption does not meet the statutory minimum for “high-volume ratepayers”*

There are few characteristics common to small and mid-size commercial and industrial ratepayers. Common items are as follows:

- each has a formal contract for transportation of its supply with Aquila;
- each may qualify for interruptible service; and
- each may purchase its natural gas commodity from a third party (i.e., some entity other than Aquila)

The commodity pretty much ends at that point.

On the other hand, as do other jurisdictional utilities, Aquila submits that there are numerous different characteristics for small and mid-size commercial and industrial ratepayers. In this category would fall a variety of types of ratepayers such as: (i) governmental accounts, schools, office buildings, etc.; (ii) churches; (iii) retail sales and service businesses of all types and sizes; and (iv) irrigators. It is unreasonable to generalize about the characteristics for such a broad and diverse ratepayer group – some are very weather-sensitive, others are not; some predominantly use natural gas for space heating purposes, while others use natural gas for processes. For example, in Aquila’s three rate areas, like other jurisdictional utilities, the principal characteristic of small-volume customers is that most, if not all, such customers use natural gas for space heating. Thus, their consumption of natural gas is greater during the colder weather seasons and reduces significantly during warmer weather. By comparison, the “high-volume” customers use more natural gas for processing activities.

3. *Possible alternative rate designs for said ratepayers*

The rate design alternatives included in Neb. Rev. Stat. § 66-1855 are certainly alternatives to traditional rate design. The number of other alternatives is limited only by the imagination of those involved. One solution could be to place all fixed cost and the profit margin of the jurisdictional utility into the monthly customer charge. Aquila also believes that banded rates and negotiated rates are also popular with customers.

4. *Technical issues related to implementation of alternate rate designs including but not limited to metering and flow control*

In order to implement certain rate design alternatives, a jurisdictional utility must monitor the daily flow of natural gas, in order to maintain system integrity and properly assign costs to ratepayers. To do so, telemetering equipment may be required. This equipment, while costly, may enable ratepayers to participate in such alternative programs, and the economic payback for such equipment may be relatively short for such ratepayers. In addition, a customer moving from a non-jurisdictional “high-volume” rate to a jurisdictional rate should be placed on an interim rate design that allows all the margin to be captured in the customer charge. This interim rate design would continue until the next general rate increase, at which time all interim rate designs would be included with the regular jurisdictional sales rate.

5. *Costs associated with implementation of possible alternate rate designs for ratepayers*

The costs for alternative rate designs, which will vary according to the type of alternative being considered, must be included as part of the discussion concerning the potential adoption of the alternative. Such costs include, but are not limited to, education, stranded costs, exit or transition fees, gas purchase increased for remaining customers, imbalance, debts, lender of last resort, or other related, but foreseeable costs. All costs reasonably incurred by a jurisdictional utility to implement an approved rate design alternative should be included as part of the reasonable operating expenses of the utility, Neb. Rev. Stat. § 66-1825(7). There should be no incremental cost to the utility going forward.

6. *Any statutory or regulatory changes necessary for alternate rate designs*

As noted above, any change in rate design must come following a proceeding, initiated by the jurisdictional utility, the Commission, or a third party. Aquila does not believe that any

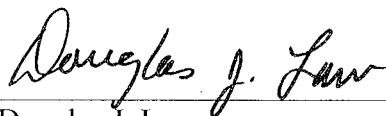
statutory or regulatory changes, other than such a proceeding, are necessary to implement banded rates, negotiated rate, or customer choice alternatives under Neb. Rev. Stat. § 66-1851, and, in fact, other alternative forms of rate design are also authorized by such statute, in that it lists the above three alternatives, and states that the Commission's right to authorize them is "including, but not limited to" those alternatives. Thus it appears that the Commission has broad authority, under current law, to consider a wide variety of alternatives, so long as they are "consistent with general regulatory principles."

To that end, Aquila urges the Commission to determine specifically when or at what time does a high-volume ratepayer become a jurisdictional customer. For example, if a high-volume ratepayer under contract drops below the 500 therms per day minimum, when does he become a jurisdictional customer and move to a jurisdictional rate? If a customer has an aggregate load to equate to a daily minimum of 500/day but does not take 500/day each day, then is it a high-volume or a small-volume customer? The Commission should consider and define a variety of different customer load patterns as part of its deliberations in this proceeding.

DATED as of the 6th day of September, 2005.

RESPECTFULLY SUBMITTED,

**AQUILA, INC. d/b/a
AQUILA NETWORKS**



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